

REMARKS

Applicants thank the Examiner for the detailed Office Action dated 28 March 2007. Applicants respectfully request reconsideration of the present application in view of the reasons that follow.

Claims 1-18 and 21-29 were pending in the application. Claims 1, 3, 5, 7, and 21 are currently being amended. After amending the claims as set forth above, claims 1-18 and 21-29 remain pending in this application.

For simplicity and clarity purposes in responding to the Office Action, Applicants' remarks are primarily focused on the rejections applied to the independent claims (i.e., claims 1, 7, 13, 21, and 24) as outlined in the Office Action with the understanding that the dependent claims are patentable for at least the same reasons (and in most cases other reasons) that the independent claims are patentable. Applicants expressly reserve the right to argue the patentability of the dependent claims separately in any future proceedings.

Claim Rejections – 35 U.S.C. § 112 ¶2

On page 2 of the Office Action, claims 1-6 were rejected under 35 U.S.C. § 112 ¶2 as being unpatentable for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Claims 1 and 3 have been amended to overcome this rejection. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Claim Rejections – 35 U.S.C. § 102***Independent Claims 1, 7, 13, 21, and 24 over Modesitt et al.***

On page 2 of the Office Action, independent claims 1, 7, 13, 21, and 24 and various dependent claims were rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 6,136,010 to Modesitt et al.. Applicants respectfully traverse the rejection. Modesitt et al. does not identically disclose the subject matter recited in independent claims 1, 7, 13, 21, or 24.

Modesitt et al. does not identically disclose the combination of elements recited in independent claim 1, as amended. For example, independent claim 1, as amended, recites a “vascular closure device” including, among other elements, a “suture configured to move with the first needle from the retracted position to the extended position,” and a “snare configured to move with the second needle from the retracted position to the extended position, the snare also being configured to grasp the suture,” which is not identically disclosed in Modesitt et al. What is being interpreted as the snare (i.e., barbed end 42 of needle 38) grasps the portion of suture 74. However, the portion of suture 74 does not qualify as the suture recited in claim 1 because it does not move with a needle from a retracted position to an extended position.

Modesitt et al. does not identically disclose the combination of elements recited in independent claim 7, as amended. For example, independent claim 7, as amended, recites a “vascular closure device” including, among other elements, an “anchor configured to extend through an opening in a blood vessel,” a “snare configured to be inserted through a wall of the blood vessel at a location that is adjacent to the opening in the blood vessel, and a “suture configured to be inserted through the wall of the blood vessel at another location that is adjacent to the opening, the snare also being configured to grasp the suture in the blood vessel and retract the suture through the wall of the blood vessel,” wherein “the vascular closure device is configured to close the opening in the blood vessel,” which is not identically disclosed in Modesitt et al. What is being interpreted as the snare (i.e., barbed end 42 of needle 38) grasps the portion of suture 74. However, the portion of suture 74 does not qualify as the suture recited in claim 7 because it is not inserted through the wall of the blood vessel at another location that is adjacent to the opening that the vascular closure device is configured to close.

Modesitt et al. does not identically disclose the combination of elements recited in independent claim 13, as amended. For example, independent claim 13, as amended, recites a “method of closing a vascular opening” including, among other elements, “inserting a sheath into a vessel through a vessel opening,” “inserting a snare into the vessel on a first side of the vessel opening,” “inserting a suture into the vessel on a second side of the vessel opening,” and “grasping the suture with the snare,” which is not identically disclosed in Modesitt et al. What is

being interpreted as the snare (i.e., barbed end 42 of needle 38) grasps the portion of suture 74. However, the portion of suture 74 does not qualify as the suture recited in claim 13 because it is not inserted into the vessel on a second side of the vessel opening.

Modesitt et al. does not identically disclose the combination of elements recited in independent claim 21, as amended. For example, independent claim 21, as amended, recites a “vascular closure device” including, among other elements, a “needle positioned at a distal end of the vascular closure device, the needle being configured to move between a retracted position and an extended position,” and a “suture configured to move with the needle from the retracted position to the extended position, wherein a portion of the suture extends lengthwise from a tip of the needle toward a proximal end of the vascular closure device, the portion of the suture being positioned outside of the needle,” which is not identically disclosed in Modesitt et al. The suture 34 in Modesitt et al. is positioned inside the needle 38’.

Modesitt et al. does not identically disclose the combination of elements recited in independent claim 24, as amended. For example, independent claim 24, as amended, recites a “method of closing an opening in a blood vessel” including, among other elements, “inserting a suture through a wall of the blood vessel at a location that is adjacent to the opening,” “inserting a snare through the wall of the blood vessel at another location that is adjacent to the opening,” and “grasping the suture with the snare and withdrawing the suture through the wall of the blood vessel,” which is not identically disclosed in Modesitt et al. What is being interpreted as the snare (i.e., barbed end 42 of needle 38) grasps the portion of suture 74. However, the portion of suture 74 does not qualify as the suture recited in claim 24 because it is not inserted through a wall of the blood vessel at a location that is adjacent to the opening that is being closed by the method.

Accordingly, Applicants respectfully submit that independent claims 1, 7, 13, 21, and 24 and the claims which are dependent thereon are not anticipated by Modesitt et al. under 35 U.S.C. § 102(b) and are patentable.

Independent Claim 7 over Riza and Burbank et al.

On pages 3-4 of the Office Action, independent claim 7 and various dependent claims were rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 5,562,688 to Riza or U.S. Patent No. 6,638,286 to Burbank et al. Applicants respectfully traverse the rejection. Neither of these references identically disclose the subject matter recited in independent claim 7.

Neither Burbank et al. nor Riza identically disclose the combination of elements recited in independent claim 7, as amended. For example, independent claim 7, as amended, recites a “vascular closure device” including, among other elements, an “anchor configured to extend through an opening in a blood vessel, the anchor being configured to move between a contracted configuration where the anchor is sized to fit through the opening in the blood vessel and an expanded configuration where the anchor is too large to fit through the opening in the blood vessel,” which is not identically disclosed in either Burbank et al. or Riza.

Claim Rejections – 35 U.S.C. § 103(a)***Independent Claim 1***

On page 5 of the Office Action, independent claim 1 and various dependent claims were rejected under 35 U.S.C. § 103(a) as being unpatentable over Riza in view of U.S. Patent No. 5,330,488 to Goldrath and U.S. Patent No. 5,562,684 to Kammerer. Applicants respectfully traverse the rejection. None of the cited references, alone or in combination, disclose, teach, or suggest the subject matter recited in independent claim 1.

Applicants respectfully submits that Riva teaches away from combining these references in the manner asserted in the Office Action because if a pre-tied knot was used with the trocar gripper 10 of Riva, the trocar gripper would be sutured to patient – a result that is obviously undesirable. Applicants respectfully note that the suture in Riva extends through the holes 19 and 20 (see Figs. 1 and 5) of the trocar gripper 10. If the knot was pre-tied, then it would simply

serve to suture the trocar gripper 10 to the opening in the patient. Accordingly, there is no reason that anyone would make such a modification.

Applicants respectfully submit that the subject matter recited in independent claim 1 and the claims which are dependent thereon, considered as a whole, would not have been obvious to a person of skill in the art and are patentable. Accordingly, Applicants request that the Patent Office withdraw the rejection of these claims under 35 U.S.C. § 103(a).

* * *

Applicants respectfully submit that the present Application is in condition for allowance. Applicants request reconsideration and allowance of the pending claims. The Examiner is invited to contact the undersigned by telephone if the Examiner needs anything or if a telephone interview would advance the prosecution of the present application.

Applicants respectfully put the Patent Office and all others on notice that all arguments, representations, and/or amendments contained herein are only applicable to the present patent application and should not be considered when evaluating any other patent or patent application including any patents or patent applications which claim priority to this patent application and/or any patents or patent applications to which priority is claimed by this patent application.

Respectfully submitted,

Date 30 July 2007

By /Scott C. Nielson/

Scott C. Nielson
Registration No. 50,755